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16  
17 **UNITED STATES BANKRUPTCY COURT**  
18 **CENTRAL DISTRICT OF CALIFORNIA - SANTA ANA DIVISION**  
19

20 In re:  
21 THE LITIGATION PRACTICE GROUP P.C.,  
22 Debtor.  
23  
24  
25  
26  
27  
28

Case No.: 8:23-bk-10571-SC

Chapter 11

**TRUSTEE'S *OMNIBUS* RESPONSE IN  
SUPPORT OF MOTION FOR SALE OF  
PROPERTY OF THE ESTATE UNDER  
SECTION 363(b)**

Date: July 21, 2023  
Time: 10:00 a.m. (pacific time)  
Judge: Hon. Scott C. Clarkson  
Place: Courtroom 5C  
411 W. Fourth Street  
Santa Ana, CA 92701

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**I.**

I.

**INTRODUCTION**

Trustee submits this Omnibus 1) Response To The Order Requesting Additional Briefing Re: Sale Motion [Dkt No. 259]; and 2) Opposition to Motion for Sale of Property Of the Estate Under Section 363(b) [Dkt No. 296]; 3) Objection Filed by Creditor Alteryx, Inc. [Dk. No. 289]; 4) Objections of Carolyn Beech and Diane Scarnavack To Motion For Sale Of Property Of The Estate Under Section 363(b) [Dk. No. 254].

Trustee has satisfied all factors pursuant to 11 U.S.C. § 363 necessary for this Court to approve the Trustee's Sale Motion. The UCC supports the Trustee's Sale Motion subject to minor reservation of rights related to issues that are unfounded, have been resolved or inconsequential to the Court's authority to grant the Sale Motion. Similarly, the letter from the CFPB attached the OUST's Response as Exhibit A, in fact supports the Court's authority to grant the Sale Motion, subject to its own recommendations, which as discussed herein are not required nor do they affect the Court's authority to grant the Sale Motion. Interested parties, including creditors [See for example Dkt Nos. 267, 294, 299], consumer clients [Dkt No. 293] and even the CFPB (Dkt No. 260, Exh. A) by way of its letter to the OUST have voiced their opinion and provide support for the Trustee's Sale Motion and the service the proposed Good Faith Purchaser under the terms of the new Legal Services Agreement ("LSA") can and will provide, subject to consumer protection and court approval. Consumer creditors, who have made a claim, whether they appreciate the benefit of the sale or not, do in fact stand to benefit from funds being injected into the Estate to pay creditor claims. As such, it is clear the Trustee has made every effort in his sound business judgment to take all interested parties interests into account.

Trustee has engaged in extensive negotiations with the bidders, UCC and others regarding the proposed sale in order to maximize the value to the Debtor's Estate. Given the injection of numerous parties and Trustee's willingness to accept and incorporate their proposals is evidence of an arms-length good faith sale, as discussed more thoroughly herein and in the supplemental declaration of Trustee filed concurrently herewith. Based on all of the evidence, the exigent circumstances that exist in order to maximize and preserve the quickly diminishing value of the

Debtor's assets to the Estate, all creditors and protect the consumer clients Trustee respectfully requests this Court grant the Sale Motion and enter the Sale Order, as submitted or may be modified by the Court.

## II.

### **TRUSTEE HAS MET ALL REQUIREMENTS UNDER 11 USC § 363 AUTHORIZING THIS COURT TO APPROVE THE PROPOSED SALE OF DEBTOR'S ASSETS**

The court should approve a sale of property under Section 363(b)(1) if the trustee has established a sound business purpose for the proposed transaction. *Walter v. Sunwest Bank (In re Walter)*, 83 B.R. 14, 16 (B.A.P. 9<sup>th</sup> Cir. 1988); *In re Wilde Horse Enterprises, Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991) ("In any sale of estate assets, the ultimate purpose is to obtain the highest price for the property sold."). The business judgment standard is deferential. *Simantob v. Claims Prosecutor, L.L.C. (In re Lahijani)*, 325 B.R. 282, 289 (B.A.P. 9<sup>th</sup> Cir. 2005) ("Ordinarily, the position of the trustee is afforded deference, particularly where business judgment is entailed in the analysis or where there is no objection.").

A bankruptcy court has discretion when approving a sale of Debtor's assets pursuant to 11 U.S.C. § 363(b). *240 North Brand Partners v. Colony GFP Partners, L.P.* (In re 240 North Brand Partners), 200 B.R. 653, 656 (B.A.P. 9<sup>th</sup> Cir. 1996). "The requirements of section 363(b) protect the creditors' interest in the assets of the estate." As a result, debtors who wish to utilize § 363(b) to dispose of property of the estate must demonstrate that such disposition has a valid business justification. *Id.* at 659 [internal citations omitted] citing *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983).

In determining whether a sale satisfies the business judgment standard, courts have required that: (1) accurate and reasonable notice of the sale has been given to interested persons; (2) a sound business purposes exists; (3) the sale yields an adequate price under the circumstances; and (4) the parties to the sale have acted in good faith. *In re Titusville Country Club*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); see also *In re Walter*, 83 B.R. 14, 19-20 (B.A.P. 9<sup>th</sup> Cir. 1988); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1069 (2d Cir. 1983).

1 In addition to proving that the proposed sale has a valid business justification, the debtor  
2 must also show that the sale is proposed in good faith. *In re Wilde Horse Enterprises, Inc.*, 136  
3 B.R. 830, 841 (Bankr. C.D. Cal. 1991). "'Good faith' encompasses fair value, and further speaks  
4 to the integrity of the transaction. Typical 'bad faith' or misconduct, would include collusion  
5 between the seller and buyer, or any attempt to take unfair advantage of other potential purchasers."  
6 *Id.* at 842. Applying these standards and weighing the evidence as set forth herein, the  
7 supplemental declaration of Richard Marshack concurrently filed herewith, the Trustee's Sale  
8 Motion [Dkt No. 191] and Pocket Brief [Dkt No. 260] and supporting evidence incorporated herein  
9 by reference, and specific circumstances in this case, including the balance that needs to be struck  
10 between consumers and creditors and the exigency with which a sale, if any is to occur, should be  
11 granted.

12 **A. The Proposed Sale Has Been Duly Marketed, Negotiated, and Structured in Good**  
13 **Faith for the Benefit of the Estate**

14 Trustee extensively marketed the sale, either himself or through his counsel, to assure  
15 maximum value could be obtained for all creditors. See, Supplemental Declaration of Richard A.  
16 Marshack paragraphs 6-10.

17 Notwithstanding these efforts, the UST Oppo argues that because the sale price is linked  
18 to the number of consumer contracts that do not opt out of the sale, the potential impact on the  
19 price considering that the anticipated price is now lower warrants a new notice and hearing. UST  
20 Oppo.,14:8-11. This is wrong. The Sale Motion advised parties that the proposed sales price was  
21 a formula that depended, in part, on the number of active files. In their due diligence, CLG took  
22 the position that certain files did not constitute active files. Trustee disputes this contention and  
23 the parties have been working towards an informal resolution should CLG be the winning bidder.  
24 But, no new notice is required because all interested parties were always advised that the  
25 ultimate amount to be received by the estate depended on the number of active files and the  
26 amounts to be collected over time.

27 The UST also argues "the Trustee has presented no claims analysis or breakdown of what  
28 funds are coming into the estate, when these funds would be received, where these funds are going,



1 and who would be getting paid, including anticipated trustee fees, professional fees, additional  
2 administrative fees from post-petition funding, etc.” UST Oppo., 14:19-24. The clearly articulated  
3 business justification for the sale is to reduce the Assets<sup>1</sup> to money, pay undisputed claims, and  
4 then determine through subsequent proceedings the extent that disputed claims should either be  
5 allowed or disallowed against the proceeds of the sale. To that end, Trustee has viable avoidance  
6 claims that he also anticipates will generate a benefit for creditors. Indeed, where the trustee may  
7 use his avoidance powers to generate a return for creditors from otherwise encumbered property,  
8 turnover and sale is appropriate. *See, e.g., In re Bolden*, 327 B.R. 657, 666-69 (Bankr. C.D. Cal.  
9 2005) (Donovan, J.) (authorizing turnover of property because the avoidance of portions of liens  
10 would generate a significant benefit for unsecured creditors).]

11 The UST Oppo also claims the Trustee has presented insufficient evidence demonstrating  
12 the benefit consumers would receive from the sale citing the only evidence in support of said  
13 benefit being declarations from affiliated attorneys of LPG. UST Oppo., 15:3-8. Trustee has also  
14 submitted declarations of consumers attesting to the successes that LPG provided them. See Dk.  
15 No. 293, Notice of Declarations of Marco Green, Vivian Solis, Emily Tracey, Lejla Jacobson,  
16 Eduardo Niez, Cynthia Leydig, Mirtie Woldemichael, John Strickland, and Tania Mejia (“Client  
17 Declarations”). Indeed, a sale that allows for reformed contracts to be assumed and assigned would  
18 helped all clients with (1) elimination or reduction of interest; (2) settlements that provide  
19 affordable payments over time; (3) principal payments only; (4) avoidance of bankruptcy; and (5)  
20 prevention of wage garnishment among other benefits. These Client Declarations demonstrate that  
21 there is benefit to the consumers if the assets are sold. Any clients choosing to opt-out or cancel  
22 their contracts will be free to do so.]

23 Separately, the UST Oppo claims “there is little evidence that CLG will provide adequate  
24 legal services to benefit consumers.” UST Oppo., 15:12-13. In the eyes of the UST:

25 “... permitting the Trustee to replace the illegal consumer agreements and then sell  
26 them to CLG provides no benefit to the consumers. Those likely to be paid from the  
27 sale are the Trustee, his professionals, the secured creditors (who funded all the wrong-  
doing), and the post-petition lenders (who continue to fund the wrong-doing).  
Consumers are not being protected and will not benefit from the sale. Rather, their

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28 <sup>1</sup> Terms not defined herein are as defined in the Motion.

contracts are being sold to CLG with little evidence that they will receive adequate legal services from CLG or a full refund of unearned fees (as provided under LPG's Legal Service Agreement)."

See, UST Oppo. 17:13-19.

Trustee has proposed multiple protections for consumers including, but not limited to, a monitor that would ensure an enhanced level of protection for consumers whose contracts are sold. *See*, Dk. No. 305, *Supplemental Declaration of Richard A. Marshack Regarding Designation of a Monitor*. Other protections including those identified below, ensure a smooth transition for consumer clients as opposed to abandoning and leaving them with no representation. Moreover, the UST Oppo ignores what Trustee has consistently advocated which is completing a sale to fund a Chapter 11 plan that will seek to separately classify consumers because their rights are different from other creditors. For example, a client who was overcharged has a greater right to a refund than the large non-client creditors that invested money in Debtor's business.

**B. The Proposed Consumer Protections are Adequate to Protect Consumers.**

**1. The Consumer Notice Complies with All Applicable State and Federal Laws Providing Sufficient Notice of Consumers' Rights to Opt-Out of the Sale.**

Especially curious is the OUST's and CFPB's recommendation that the consumers be "required to affirmatively opt-in rather than opt-out of the reformed agreements." Dkt. No. 259, Exhibit A – 0039. First, such a recommendation ignores specific rules governing the sale of a law practice and turns the California Rules of Professional Conduct ("CRPC") on its head. Instead, the CRPC requires a purchaser of a law firm to give notice not less than 90 days prior to the transfer and "**if no response is received within 90 days** after [the notice] is sent, or if a client's rights would be prejudiced by a failure of the purchaser to act during that time, **the purchaser may act on behalf of the client until otherwise notified by the client...**" CRPC 1.17(b)(2) (emphasis added). Thus, the rule allows for the protection of the clients' rights without extinguishing the ever-present ability for the client to terminate representation, as additionally provided for in the notice. Otherwise, clients would go from represented to *unrepresented* without any action on their behalf, which would call other provisions of the CRPC into question. *See e.g.*, CRPC 1.16.

///

1 The American Bar Association’s Comment to Rule 1.17 of the Model Rules of Professional  
2 Conduct echoes this premise in stating:

3 **“[i]f nothing is heard from the client within that time, consent to the sale is**  
4 **presumed.”**

5 American Bar Association, *Rule 1.17 Sale of Law Practice – Comment*, August 16, 2018,  
6 [www.americanbar.org/groups/professional\\_responsibility/publications/model\\_rules\\_of\\_professio](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_17_sale_of_law_practice/comment_on_rule_1_17/)  
7 [nal\\_conduct/rule\\_1\\_17\\_sale\\_of\\_law\\_practice/comment\\_on\\_rule\\_1\\_17/](http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_17_sale_of_law_practice/comment_on_rule_1_17/) (emphasis added). “All  
8 elements of client autonomy, including the client’s absolute right to discharge a lawyer and transfer  
9 the representation to another, **survive the sale of the practice area.**” *Id.* (emphasis added).

10 Recently, the American Bar Association had the opportunity to clarify that ABA Model  
11 Rule 8.5 provides that, in cases where the lawyer practices in multiple jurisdictions, the lawyer  
12 should comply with the law of the state where the tribunal sits. This further supports that the CRPC  
13 apply to the current transaction. American Bar Association, Standing Committee on Ethics and  
14 Professional Responsibility, *Choice of Law, Formal Opinion 504* (March 1, 2023). In this instance,  
15 the application of the ABA Model Rules and the CA Model Rules also provides a strict standard,  
16 offering the most protection to the consumer clients since comparatively speaking. *See e.g.*, Pa.  
17 RPC 1.17 (requiring a 60 day notice before representation is presumed); N.J. Court Rules, RPC  
18 1.17 (requiring a 60 day notice before representation is presumed); Fla. Bar Reg. R. 4-1.17  
19 (requiring a 30 day notice before representation is presumed); Colo. RPC 1.17 (requiring a 60 day  
20 notice before representation is presumed); ORPC 1.17 (requiring a 45 day notice before  
21 representation is presumed); Tenn. Sup. Ct. R. 8, Rule 1.17 (requiring a 30 day notice before  
22 representation is presumed).

23 This application is, of course, limited to the sale transaction before the court and the direct  
24 notice required as a result. Nothing in the Formal Opinion nor the aforementioned should be read  
25 to impact the ability for different state laws to apply under a separate circumstance (i.e., if a creditor  
26 sues a consumer for breach of a consumer credit agreement). After all, “state contract law generally  
27 defines a party's rights, while federal bankruptcy law determines how those rights are enforced in  
28 a bankruptcy case.” *In re Bergt*, 241 B.R. 17, 35 (Bankr. D. Alaska 1999).

1 Furthermore, On July 13, 2023 at the request of the OUST, Notice of the proposed Sale  
2 was provided to all interested parties, including but not limited to LPG consumer clients for which  
3 the Trustee through Phoenix had email account information for. See Docket No. 233. The  
4 Declaration of Jamie D. Mottola [Docket 308] outlines the responses from the consumers received.  
5 Accordingly, the 90-day notice of the transfer of the consumer files will happen after the Court  
6 approves the sale in compliance with applicable law. To that end, the Trustee has diligently  
7 negotiated with the UCC the proposed notice to the consumer.

8 **2. The Proposed Reformed Legal Services Agreement is Compliant With All**  
9 **Applicable Laws**

10 Congress did not authorize the FTC or CFPB to regulate the practice of law through the  
11 Telemarketing Sales Rule or any other related financial regulation. *Consumer Fin. Prot. Bureau*  
12 *v. Howard* (Case No. 8:17-cv-00161-JLS-JEM) 2017 U.S. Dist. LEXIS 222742 at 10-11 (C.D.  
13 Cal. Feb. 13, 2017); see also *ABA v. FTC*, 430 F.3d 457, 458 (D.C. Cir.2005). Thus, pursuant to  
14 12 U.S.C. Section 5517(e)(1), the CFPB is not authorized, to "exercise any supervisory or  
15 enforcement authority with respect to an activity engaged in by an attorney as part of the practice  
16 of law under the laws of a State in which the attorney is licensed to practice law." 12 U.S.C.  
17 § 5517(e)(1). This limitation does not apply to the "offering or provision of a consumer financial  
18 product or service . . . that is not offered or provided as part of, or incidental to, the practice of law,  
19 occurring exclusively within the scope of the attorney-client relationship" or "that is otherwise  
20 offered or provided by the attorney in question with respect to any consumer who is not receiving  
21 legal advice or services from the attorney in connection with such financial product or service."  
22 *Id.* § 5517(e)(2). Thus, in applying the TSR to attorneys and the practice of law, and applying  
23 *Chevron* step two (*Chevron U.S.A. Inc. v. NRDC*, 467 U.S. 837, 842-43(1984)), Courts have held  
24 that the TSR is not intended to regulate the practice of law, "just a limited number of attorneys  
25 who engage in activities generally not associated with the legal profession." *Howard, supra*, 2017  
26 U.S. Dist. LEXIS 222742 at 13.

27 With little doubt, alternative dispute resolution, settlement negotiation, and entering into  
28 settlement agreements is and always has been a function of the legal practice highly encouraged

1 throughout the legal industry. The UST and CFPB overreach in their objection to the proposed  
2 LSA insisting that any attorney that negotiates a settlement on behalf of a client involving a  
3 consumer debt is subject to the provisions of the TSR. Indeed, the CFPB takes issue with language  
4 in the proposed LSA intended to address this issue, specifically provisions that: 1) inform the client  
5 they are not providing debt settlement services; and 2) providing legal services which may, as in  
6 many instances, include representation in negotiating a settlement. See Trustee Objection, Exhibit  
7 A at pg. 37. In this way, the UST and CFPB both argue that the CFPB through the TSR may  
8 regulate the practice law. This, however, is an outcome that Congress and the Courts of this district  
9 have rejected.

10 **C. The Proposed Sale of Debtor's Assets Was Made With the Trustee's Utmost**  
11 **Reasonable Business Judgment Taking Many Factors Into Consideration and with**  
12 **the Input of The UCC and Potential Good Faith Purchasers.**

13 In making the decision to sell Debtor's assets, a "melting-ice cube", the Trustee used his  
14 utmost business judgment to balance the interests of the Debtor's estate and "the diverse interests  
15 of the [consumer client], debtor, creditors and equity holders, alike" given the exigent  
16 circumstances of this case. *In re Walter*, 83 B.R. 14, 19 (B.A.P. 9th Cir. 1988). Trustee believes  
17 the proposed sale and consumer protection built-in reach the proper balance in weighing the  
18 interests of all parties impacted by the proposed sale. Striking the right balance has been  
19 exacerbated by the exigency with which a sale of Debtor's assets, due to factors outside the  
20 Trustee's control needed to occur. Notwithstanding these challenges, the Trustee believes in his  
21 best business judgment that the proposed sale strikes the right balance between competing interests  
22 as opposed to simply shutting down the Debtor.

23 Similar to the limited objections in this matter, unhappy creditors appealed to the Second  
24 Circuit Court of Appeals regarding the expedited sale of Chrysler. The Second Circuit reviewed  
25 the history of emergency sales in bankruptcy stating:

26 The origin of § 363(b) is the Bankruptcy Act of 1867, which permitted a sale of a  
27 debtor's assets when the estate or any part thereof was "of a perishable nature or  
28 liable to deteriorate in value." *Lionel*, 722 F.2d at 1066 (citing Section 25 of the  
Bankruptcy Act of 1867, Act of March 2, 1867, 14 Stat. 517) (emphasis  
omitted). Typically, courts have approved § 363(b) sales to preserve "wasting

1       asset[s].” *Id.* at 1068 (quoting *Mintzer v. Joseph (In re Sire Plan, Inc.)*, 332 F.2d  
2       497, 499 (2d Cir. 1964)). Most early transactions concerned perishable  
3       commodities; but the same practical necessity has been recognized in contexts other  
4       than fruits and vegetables. “[T]here are times when it is more advantageous for the  
5       debtor to begin to sell as many assets as quickly as possible in order to insure that  
6       the assets do not lose value.” *Fla. Dep’t of Revenue v. Piccadilly Cafeterias, Inc.*,  
7       128 S. Ct. 2326, 2342, 171 L. Ed. 2d 203 (2008) (Breyer, J., dissenting) (internal  
8       quotation marks omitted); *see also In re Pedlow*, 209 F. 841, 842 (2d Cir. 1913)  
9       (upholding sale of a bankrupt’s stock of handkerchiefs because the sale price was  
10      above the appraised value and “Christmas sales had commenced and . . . the sale of  
11      handkerchiefs depreciates greatly after the holidays”). Thus, an automobile  
12      manufacturing business can be within the ambit of the “melting ice cube” theory of  
13      § 363(b).

14       *Ind. State Police Pension Tr. v. Chrysler LLC (In re Chrysler LLC)*, 576 F.3d 108,  
15      113-14 (2d Cir. 2009) *vacated as moot sub. nom.* 558 U.S. 1087 (2009).<sup>2</sup>

16       While the Supreme Court vacated the Second Circuit’s decision as moot, its review of prior  
17      cases on “expedited” sales is notable and its discussion of balancing the need for a prompt sale  
18      against the procedural protections of the Code against sub rosa plans remains influential nationally.  
19      As indicated above, the Assets to be sold are Debtor’s primary asset and are the “melting ice cube”  
20      the value of which will be far less in the future, if of any value at all, than they are presently if the  
21      Court does not grant the Sale Motion. SDRM at ¶20.

22       As detailed in the Supplemental Declaration, the Trustee cannot continue to finance  
23      operations to provide additional time to market the Assets and identify other possible purchasers  
24      while the number of Active Executory Contracts continue to dwindle. The proposed sale will not  
25      only monetize the Debtor’s assets for the benefit of the estate, but it will also transfer the Assets  
26      to the Purchaser subject to numerous oversight and consumer protections. SDRM at ¶14. While  
27      these oversight and consumer protections are not part of the traditional analysis of a sale pursuant  
28      to section 363, the Trustee believes these protections are important to fulfilling his ethical and  
29      fiduciary responsibilities, impact numerous parties in interest and are beneficial to the estate. These  
30      considerations, among the others discussed herein, along with extensive negotiations with the  
31      ///

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32       <sup>22</sup> *See also, In re Lehman Bros.*, 445 B.R. 143, 180 (Bankr. S.D.N.Y. 2011) (citing the Second  
33      Circuit’s Chrysler decision and quoting *In re Lionel* to establish that the most important “factor  
34      for the court in determining whether to approve a §363 sale is whether the asset is decreasing in  
35      value.”)

1 UCC, bidders and counsel, have informed Trustee's utmost business judgment in structuring and  
2 making his motion to sell Debtor's assets.

3 **D. The Sale of Debtor's Assets Will Benefit the Estate, Consumer Clients and Prevent**  
4 **Those Engaged in the Alleged Wrongful and Fraudulent Conduct From Receiving a**  
5 **Windfall.**

6 As discussed above, the value of Debtor's assets continue to diminish with every passing  
7 day. This sale proposes to bring in approximately \$40,000,000 with cash up front in the amount of  
8 approximately \$4,300,000. In the Trustee's best business judgment, implementing any other sale  
9 procedure and causing further delay will harm the Debtor's estate, the creditors, and consumers  
10 and erode what value remains such that it would likely be worthless. SDRM at ¶20. In this way,  
11 the OUST appears to argue that the sale procedure and value to the Debtor's estate itself is grounds  
12 to accomplish what the OUST feels is the proper course of action –dismiss Debtor's Bankruptcy  
13 case or convert it to a Chapter 7. Interestingly, the parties most knowledgeable about the Debtor's  
14 business and value of its assets, Debtor's creditors, voice no objection or provide only limited  
15 opposition and in fact support the proposed sale. Thus the evidence and support for the sale  
16 regarding the value to be achieved through the strategic structuring of the proposed sale, partially  
17 required by the unique nature of the contracts and legal services to be provided, is fair and  
18 reasonable.

19 **E. The Court May Authorize The Reformation of the Legal Services Agreement By**  
20 **Way of Severance and Cure With The Third Party Good Faith Purchaser**

21 This Court is authorized to issue an order requiring an approved Good Faith Purchaser of  
22 Debtor's assets to enter into a new separate legal services agreement with consumer clients that  
23 correctly states the legal services to be provided and cures any alleged concerns the UST or CFPB  
24 may have with the Debtor's prior LSA. This is one of the most fundamental principles of  
25 Bankruptcy law –creation of new contractual rights, replacing or superseding pre-bankruptcy  
26 contracts. 11 U.S.C. § 1141(d)(1); *see also* United States Courts, Chapter 11 – Bankruptcy Basics  
27 available at [https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-](https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics)  
28 [bankruptcy-basics](https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-11-bankruptcy-basics) (last accessed 7/19/2023). Notably, the Trustee is not requesting the Court to

1 re-write Debtor's prior LSA with consumer clients through the sale procedure nor is it even  
2 required, as discussed below. To the contrary, the Sale Order and APA clearly provide, consumer  
3 clients subject to transfer will need to enter into a new, separate and legally complaint LSA with  
4 the Good Faith Purchaser during the 90-day notice period or after the 90-day period in the event  
5 the consumer client does not opt-out of the transfer. SDRM at ¶21. In essence, the sale process and  
6 Court's authorization of the proposed LSA is akin to a consumer client severing its relationship  
7 with Debtor and signing a new contract with a third party law firm.

8 The CFPB, admits the Court is authorized to grant the sale motion and reform Debtor's  
9 LSA prior to the sale if that were necessary. See OUST Response [Dkt No. 259], Exhibit A at pg.  
10 39, No. 3. Trustee, however, respectfully disagrees with the CFPB that the cure needs to be done  
11 prior to the sale, and believes instead it can be done through the sale process. Trustee is unaware  
12 of any case law requiring a client who alleges a legal services contract, or retainer that violates  
13 certain laws is required to sign a new valid contract with the offending attorney prior to being  
14 permitted to terminate and sever the violative contract and seek new representation. Moreover, it  
15 overlooks the Court's ability to reform such contracts, as it does quite often, through the sale  
16 procedure set forth in 11 U.S.C. §§ 363(b) and 365.

17 **F. The Proposed Sale of Debtor's Assets Free And Clear is Proper Pursuant to 11**  
18 **U.S.C. § 363(f).**

19 There is no dispute that the Trustee is permitted to sell the assets of the Debtor free and  
20 clear of another party's interest in the property pursuant to 11 U.S.C. § 363(f). This section permits  
21 the sale of property free and clear of another's interest if any one of the following conditions exist:

22 (1) applicable non-bankruptcy law permits such a free and clear sale; (2) the holder  
23 of the interest consents; (3) the interest is a lien and the sale price of the property  
24 exceeds the value of all liens on the property; (4) the interest is the subject of a bona  
25 fide dispute; or (5) the holder of the interest could be compelled in a legal or  
equitable proceeding to accept a monetary satisfaction of its interest. See 11 U.S.C.  
§ 363(f).

26 On Page 34 of the Sale Motion, the Trustee identified the sixteen (16) UCC-1 statements on file  
27 against the Debtor. Many of these UCC-1 statements were filed by an agent or representative of  
28 the creditor and failed to identify any specific item of collateral that secured the claim.



1 Furthermore, only four of the sixteen filers of UCC-1 statements have either filed a claim or were  
2 scheduled by the Debtor as a secured creditor.

3 The first seven UCC-1 statements were filed in the 90 day period preceding the petition  
4 date and are subject to avoidance as preferences pursuant to 11 U.S.C. § 547.<sup>3</sup> As stated in the  
5 Sale Motion and in the Supplemental Declaration of Richard Marshack concurrently filed  
6 herewith, the Trustee believes that the proposed sale can occur free and clear of all liens, claims,  
7 and encumbrances because these interests are in bona fide dispute because they may be avoidable,  
8 duplicative of other filings, or have been satisfied but not released of record.

9 As the Trustee's Declaration states, the Debtor regularly obtained financing from numerous  
10 third parties often pledging the same collateral to each lender. Claims of earlier creditors were  
11 often satisfied with subsequent borrowing and these earlier creditors may not have released the  
12 UCC-1 statements. Furthermore, the Trustee has reviewed the terms of some of the Debtor's pre-  
13 petition financing transactions and the Trustee believes that many of the Debtor's transactions with  
14 secured creditors may be subject to avoidance. These facts and those set forth in the Trustee's  
15 Declaration are the basis for the Trustee's belief that the claims represented by these UCC-1 filings  
16 are subject to bona fide dispute. SDRM at ¶22.

17 While "bona fide dispute" is not defined in the statute, case law is clear that a party seeking  
18 a sale free and clear of liens only has to show an "objective basis" for a dispute as to the validity  
19 of the debt. A court is not required to resolve bona fide disputes before approving a sale. A court  
20 only has to determine there is an objective basis to claim such a dispute exists if a creditor  
21 challenges the ability of a sale to occur free and clear of its lien or interest. *Union Planters Bank,*  
22 *N.A. v. Burns (In re Gaylord Grain L.L.C.)*, 306 B.R. 624, 627-28 (B.A.P. 8th Cir. 2004). See also  
23 *In re Kellogg-Taxe*, Case No. 2:12-bk-51208-RN, 2014 Bankr. LEXIS 1033, 2014 WL 1016045,  
24 at \*6 (Bankr. C.D. Cal. Mar. 17, 2014). Based on the Trustee's Declaration regarding the Debtor's  
25 pre-petition operations and the lack of information in the record regarding the existence, amount,  
26 or collateral of any of the parties that filed UCC-1 statements, there is more than an objective basis

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27  
28 <sup>3</sup> One of these creditors – Debt Validation Partners and related entities – has filed a pleading in support of the sale meeting § 363(f)(2).

1 to believe that “bona fide disputes” exist regarding the validity of the debts evidenced by the UCC-  
2 1 statements identified in the Motion to Sell. Accordingly, the Trustee has met his obligation  
3 under 11 U.S.C. § 363(f)(4). The existence of bona fide disputes is further supported by cases  
4 noting that the silence of entities with purported interests in the property being sold may be  
5 considered as additional evidence of the existence of a “bona fide dispute” that permits the sale to  
6 proceed.<sup>4</sup>

7 **G. Consumer ACH Funds Held By The Trustee Do Not Impact This Court’s Authority**  
8 **to Approve the Proposed Sale of Debtor’s Assets.**

9 Any concerns regarding the disposition of the ACH funds being held in trust in a locked  
10 account by the Trustee have no impact on this Court’s authority to grant the proposed sale of  
11 Debtor’s assets. As more thoroughly briefed in Trustee’s Pocket Brief [Dkt No. 260] and  
12 incorporated by reference herein, the proposed APA does not dispose of those funds. Trustee  
13 encourages the Court to issue a ruling on the disposition of the funds held in the blocked account,  
14 however, maintains that any order approving the sale of Debtor’s assets [Docket No. 191] is not  
15 contingent upon the ACH funds being transferred to the Good Faith Purchaser, or in any manner.  
16 As such, the objection of the OUST and CFPB in this regard is misplaced and the Court is  
17 authorized to grant the Sale Order.

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27 <sup>4</sup> [T]he failure to respond may be taken as an admission that there is a bona fide dispute or that the creditor actually  
28 consented to the sale and the collateral may be sold under § 363(f)(4). Generally, silence is not consent sufficient to  
permit a sale under § 363(f)(2). *In re Takeout Taxi Holdings, Inc.*, 307 B.R. 525, 535 (Bankr. E.D. Va. 2004)

1 **III.**

2 **CONCLUSION**

3 In conclusion, nothing in the oppositions filed to the Sale Motion overcome the  
4 substantial deference to be provided to a Trustee's exercise of business judgment. In this case,  
5 there will be no distributions to any creditors from the administration of Debtor's assets if a sale  
6 is not approved on terms that the Court finds just and proper. Thus, the evidence is clear that the  
7 best interest of the estate and its creditors is served by approving a sale.

8 Dated: July 20, 2023

9 Respectfully submitted,

10 DINSMORE & SHOHL LLP

11 By: /s/ Christopher B. Ghio

12 Christopher B. Ghio

13 Christopher Celentino

14 Yosina M. Lissebeck

15 Jeremy Freedman

16 Special Counsel to Richard A. Marshack,

17 Chapter 11 Trustee

## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 655 W. Broadway, Suite 800, San Diego, California 92101

A true and correct copy of the foregoing document entitled (*specify*):

### TRUSTEE'S OMNIBUS RESPONSE IN SUPPORT OF MOTION FOR SALE OF PROPERTY OF THE ESTATE UNDER SECTION 363(b)

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

**1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):** Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On July 20, 2023, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

☒ Service information continued on attached page

**2. SERVED BY UNITED STATES MAIL:**

On July 20, 2023, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

**3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served):** Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on July 20, 2023, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**JUDGE'S COPY**

The Honorable Scott C. Clarkson  
United States Bankruptcy Court  
Central District of California  
Ronald Reagan Federal Building and Courthouse  
411 West Fourth Street, Suite 5130 / Courtroom 5C  
Santa Ana, CA 92701-4593

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 20, 2023  
Date

Caron Burke  
Printed Name

/s/ Caron Burke  
Signature

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